

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHARLES R. GETZ, JR.)	
)	
Petitioner)	
)	
v.)	Civil Action No. 01-744-SLR
)	
TOM CARROLL, Warden,)	
DELAWARE CORRECTIONAL CENTER)	
)	
Respondent)	

MEMORANDUM ORDER

I. INTRODUCTION

Petitioner Charles R. Getz, Jr. filed this motion for a temporary restraining order and injunctive relief on November 15, 2001 alleging violations of his civil rights. (D.I. 1) Petitioner is an inmate at the Delaware Correctional Center ("DCC") in Smyrna, Delaware, and has been such at all times relevant to his claims.

In his motion, petitioner requests that the court prohibit the defendants from

1. Moving [him] from his current housing assignment in the E-Building Unit unless this is to S-1 Housing.
2. Denying [him] his current job as Librarian in the Education Building.
3. Denying [him] any property and other privileges previously permitted.

4. Prohibit D.C.C. from forcing [him] to attend any sex offenders' group programs or other group programs that may affect Fifth Amendment rights.

(D.I. 1)

II. DISCUSSION

It is beyond dispute that "the grant of injunctive relief is an 'extraordinary remedy, which should be granted only in limited circumstances.'" Instant Air Freight Co., v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989) (quoting Frank's GMC Truck Center, Inc. v. General Motors Corp., 847 F.2d 100, 102 (3d Cir. 1988)). In ruling on a motion for a temporary restraining order, this court must consider: (1) the likelihood of success on the merits; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the requested relief is granted; and (4) the public interest. See Clear Ocean Action v. York, 57 F.3d 328, 331 (3d Cir. 1995). An injunction should issue only if all four factors favor preliminary relief. See S & R Corp. v. Jiffy Lube Int'l, Inc., 968 F.2d 371, 374 (3d Cir. 1992). Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of proving a "clear showing of immediate irreparable injury." Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). The "requisite feared injury or harm must be

irreparable-not merely serious or substantial." Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977).

A. Housing Assignment

Petitioner seeks to enjoin DCC from changing his housing classification, apparently to a smaller housing unit. However, this claim does not rise to a constitutional violation. In Hewitt v. Helms, 459 U.S. 460, 468 (1983), the United States Supreme Court held that "[a]s long as the conditions or degree of confinement to which [a] prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight.'" (quoting Montanye v. Haymes, 427 U.S. 236, 242 (1976)) Thus, the transfer of a prisoner from one classification to another has been found to be unprotected by "the Due Process Clause in and of itself," even though the change in status involves a significant modification in conditions of confinement. Hewitt, 459 U.S. at 468 (citation omitted); Moody v. Daggett, 429 U.S. 78 (1976); Brown v. Cunningham, 730 F.Supp. 612 (D.Del. 1990) (stating that plaintiff's transfer from general population to administrative segregation, without being given notice and opportunity to challenge it, was not a violation of plaintiff's liberty interest). There is no indication that petitioner's placement in a different housing unit will impose an "atypical

and significant hardship on [him] in relation to the ordinary incidents of prison life" so as to impinge upon his protected liberty interests. Sandlin v. Conner, 515 U.S. 472, 484 (1995).

B. Employment

Petitioner complains he was denied his job as "Librarian in the Education Building" and, consequently, lost the good time credits given for such employment as well as \$72.00 a month in wages. It has long been recognized that an inmate's expectation of obtaining or keeping a particular prison job does not amount to a property or liberty interest protected directly under the Constitution. James v. Quinlan, 866 F.2d 627, 629-30 (3d Cir. 1989); Bryan v. Werner, 516 F.2d 233, 240 (3d Cir. 1975). Any property or liberty interest must be created, if at all, by statutes or regulations containing "the repeated use of explicitly mandatory language." Hewitt v. Helms, 459 U.S. 460, 472 (1983). Nothing contained in Delaware's statutory scheme create for an inmate a protectable liberty interest in continued employment in a particular job. 11 Del. C. § 6532. Additionally, to have a property interest, a person must have more than an abstract need or desire for it and more than a unilateral expectation of it. Rather, he must have a legitimate entitlement to it. Board of Regents v. Roth, 408 U.S. 564, 577 (1972). This court is unaware of any Department of Correction regulation which would provide Delaware inmates with an absolute

right to employment in a prison job.

Likewise, the Due Process Clause does not guarantee the right to earn good-time credits. Abdul-Akbar v. Dept. of Corrections, 910 F. Supp. 986, 1003 (D.Del. 1995). The inability to have "one type of opportunity to reduce a lawfully imposed sentence through earning good-time credits can hardly constitute an 'atypical and significant hardship'" required by the Supreme Court for a constitutional violation. Id.; Sandin v. Conner, 515 U.S. at 484.

C. Programs and Retaliation

Petitioner alleges prison officials efforts to force him to participate in a prison program for sex offenders violates his constitutional rights because it: 1) would enhance his original sentence; 2) does not allow good time credit accumulation¹; and 3) constitutes additional punishment under "double-jeopardy." (D.I. 1) He indicates his attorney told him not to participate in the program. According to petitioner, he was told that unless he participated in the program he would be reclassified to a different housing unit.

Prison officials' decisions to require programs for inmates falls within the day-to-day management of prisons which is afforded deference by the courts. Wolff v. McDonnell, 418 U.S.

¹ Petitioner's good-time credit argument fails for the reasons stated herein, Section B.

539, 561-563 (1973). Participation in a program for sex offenders does not constitute an enhanced sentence or duplicative punishment. As far as petitioner's contention that his refusal to participate in the program caused prison officials to retaliate by moving his housing assignment, there is nothing of record to suggest this was the result of any retaliatory or unlawful conduct. See generally, Abdul-Akbar v. Dept. of Corrections, 910 F. Supp. 986 at 1002.

Having reviewed the record presented, the court finds that petitioner has not carried his burden of proof as required under the standards enunciated above. There have been no arguments presented that convince the court that there exists the immediate "irreparable harm" that would justify judicial intervention at this time. Therefore, the grant of a temporary restraining order is not warranted.

III. CONCLUSION

For the reasons stated, at Wilmington this 7th day of December, 2001;

IT IS ORDERED that petitioner's motion for a temporary restraining order and injunctive relief is denied. (D.I. 1)

United States District Judge